member dissenting, that the clauses relating to grand and petty juries were applicable, and in the *Marshall* case the Court held, by one member and a member of the bar sitting as a substitute for another, the third member dissenting, that these clauses were not applicable here during that period. The decision in the two cases last mentioned, rendered by majorities of the Court as specially constituted and arriving at opposite conclusions, were filed at the same time and at most off-set each other, leaving the decisions in the other two cases, rendered unanimously by the Court as regularly constituted, in full force. In these four cases, and others that have come before the Court, the view that the Constitution did not extend here in all its fullness, whatever might be true of some of its provisions, seems to have had the support of two former members and two present members of the Court and of a former Circuit Judge and one member of the bar, and to some extent at least of two other members of the bar, sitting as substitutes, while the contrary view has had the support of but one member of the Court and of one Circuit Judge sitting as a substitute. Under these circumstances we should, of course, follow the view adopted in the *Peacock* case, the first *Edwards* case, and other cases of similar purport, unless strong and clear reasons are advanced for reversing those cases. But no flaw is pointed out in the reasoning upon which those cases were decided and no new reasons have been presented in support of the opposite view. The only new element introduced consists of the recent decisions of the Supreme Court of the United States in the so-called "Insular Cases." But these, as we read them, not only do not tend to show error in the view we have hitherto taken, but, so far as they go, support not only our former conclusion but also our former reasoning in a remarkable degree. They refute every argument made by the majority of the court in the second *Edwards* case, with one exception and that they do not pass upon though some of their language pointed strongly against that also. Those decisions, like our own in the cases referred to, were somewhat lengthy and it is unnecessary to refer to or quote from them or from our own former opinions extensively. It will be sufficient to refer to them briefly in respect of the three principal questions involved. (1) Did the Constitution extend in all its fullness of its own force to these islands immediately upon annexation; (2) Did the particular clauses relating to juries extend here of their own force at that time; and (3) Did the Constitution or these particular provisions become applicable here at that time by force of the language used in the Joint Resolution of Annexation, even if they did not then become applicable here of their own force? Let us consider these questions in their order.

4. Did, then, the Constitution extend here in all its fullness *ex proprio vigore* immediately upon annexation? In the Insular Cases the only clauses of the Constitution that were involved were that which requires that duties "shall be uniform throughout the United States" and other closely related clauses—that is, the clauses that were involved in the *Peacock* case. All nine members of the court were apparently of the opinion, expressed in the *Peacock* case, that after Porto Rico had been taken by conquest and until the ratification of the treaty of peace, the provision in regard to the uniformity of duties "throughout the United States" had no application to that island, for though the island was then subject to the sovereignty of the United States and was to be regarded as a part of the United States by other nations, it was not a part of the United States within the meaning of that provision. But the court was divided in opinion as to the application of that provision to that island after the island had been ceded by the treaty, that is, during the period which we have held corresponded to the period in question in the present cases. A minority of four members of the court apparently were of the opinion that Porto Rico then became a part of the United States within the meaning of that provision. With the minority opinions we need not concern ourselves, forcible though they were. Until the Supreme Court itself reverses the majority decision we are bound to follow it. Of the majority of five, four, namely, Justices Gray, Shiras, White and McKenna, took the view that Porto Rico remained foreign territory after the treaty within the meaning of the constitutional provisions then under consideration, and that territory when acquired by the United States, though it became domestic for some purposes, remained foreign for other purposes until it became incorporated by Act of Congress as an integral part of the United States. According to their view, the Constitution extended fully to newly acquired territory as soon as Congress showed expressly or by implication that the territory was to be deemed thenceforth fully incorporated as an integral part of the United States, but that until such time, the territory was to be regarded as in a transition state—partly domestic and partly foreign—during which period the Constitution was not applicable as a whole. As Mr. Justice Gray said: "There must, of necessity, be a transition period." The other member of the majority, Mr. Justice Brown, was of the opinion that territory became domestic as soon as acquired but that the Constitution did not fully extend to it until extended by Act of Congress. Thus so far as the Constitution was concerned the theory of a transition period which was the basis of the decision in the *Peacock* and following cases was fully sustained by the majority of the court, both branches of the majority holding that the extension or application of the Constitution to newly acquired territory depended upon the intention of Congress, one branch holding that this was accomplished by incorporating the territory as an integral part of the United States, the other holding that it was accomplished by extending the Constitution to the new territory. The difference in the reasoning by which the two branches of the majority arrived at the same conclusion so far as the Constitution was concerned was not involved in the *Peacock* case, and so it was then, as it is now, unnecessary for us to adopt either line of reasoning, although our former line of reasoning perhaps corresponded more nearly with the views expressed by the four of the five majority. Nor would that difference in reasoning make any difference in the *Peacock* case so far as the construction of the tariff laws was concerned, although it led the two branches of the majority as to the Constitution to opposite conclusions as to the tariff laws in some of those cases.

The Dingley tariff act imposed duties on "all articles imported from *foreign countries*." The Foraker Act, which took effect more than a year after the treaty of cession, imposed special duties on goods imported into the United States from Porto Rico and on goods imported into Porto Rico from the United States. Now, bearing in mind the views of the minority as to the Constitution, and the different views of the majority, both branches holding that the Constitutional provision was not applicable but that Congress could legislate as it pleased, but one Justice holding that after the treaty of cession Porto Rico became domestic territory though the Constitution did not extend to it, the result was as follows: Since Porto Rico was domestic territory within the meaning of the Dingley Act, though not a part of the United States within the meaning of the constitutional provision, duties could not be collected on goods imported into the United States from Porto Rico after the treaty of cession and before the Foraker Act (*De Lima v. Bidwell*, 21 Supr. Ct. R. 743; *Goetze v. United States, Ib.* 742) or upon goods imported into the United States from Hawaii (*Crossman v. United States, Ib.* 742) or upon goods imported into Porto Rico from the United States (*Dooley v. United States, Ib.* 762; *Armstrong v. United States, Ib.* 827). The four members of the majority as to the Constitution who took the view that Porto Rico remained foreign even after cession of course dissented, holding that duties could be collected after cession in spite of the express provisions of the Dingley Act. But these Justices were joined by Mr. Justice Brown in holding that when Congress by the Foraker Act more than a year after the cession imposed special duties on goods whether imported from Porto Rico into the United States or *vice versa*, the duties could be lawfully collected, for the reason that the constitutional provision had not yet been made applicable to Porto Rico either by extending it to that island or by incorporating that island as an integral part of the United States. *Downes v. Bidwell, Ib.* 770. From this it would seem to follow that the provision in the Joint Resolution annexing the Hawaiian Islands to the United States, that, "Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged," was, as held in the *Peacock* case, a valid exercise of power by Congress, notwithstanding the constitutional provision in question, in other words, as held in that case, that duties could be collected here at Hawaiian rates on goods imported into these islands from the United States and foreign countries during the period in question, although they could not lawfully be collected under the Dingley Act on goods imported into the United States from these islands. The Insular Cases, therefore, appear to sustain both our conclusion and our reasoning in the *Peacock* case. They sustain the view that the Constitution did not in all its fullness *ex proprio vigore* follow the flag to these islands.

5. Do the Insular Cases throw any light upon the next question,—whether the clauses of the Constitution relating to grand and petty juries became applicable here of their own force immediately upon annexation? It is contended that there are certain fundamental guarantees of civil rights which limit the power of Congress wherever it reaches, and that among these are the right not to be held to answer for an infamous crime unless on an indictment by a grand jury or to be convicted of a crime except by a unanimous verdict of a trial jury. In the dissenting opinion in the second *Edwards* case which was adopted by the majority of the Court in the *Marshall* case we pointed out some exceptions to the application of the provisions relating to grand and petty juries, as, for instance, (on pages 72-73) that an American citizen could be lawfully tried, under statutes passed by Congress, for murder committed on an American vessel, and be sentenced to death in an American consular court, in Japan, without any indictment by a grand jury or trial by a petty jury (*In re Ross*, 140 U. S. 453) and that Congress could permit an indian nation, on territory of the United States and subject to the sovereignty of the United States, to conduct trials as it pleased, without reference to the provisions of the Constitution relating to grand and petty juries (*Talton v. Mayes*, 163 U. S. 376). In the same opinion, also, assuming that there might be fundamental limitations which, as was said in *Mormon Church v. United States*, 136 U. S. 1, might exist by inference rather than by direct application of the constitutional provisions to the territories, we showed that the limitations in question were not of that character, saying, among other things: "As to whether the rights in question are among the fundamental rights, *Holden v. Hardy*, 169 U. S. 366, may be cited. In that case, while the court said, much as in the *Mormon Church* case, 'that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense,' yet it also said that 'the law is, to a certain extent, a progressive science; that in some of the States methods of procedure, which at the time the Constitution was adopted were deemed essential to the protection and safety of the people, or the liberty of the citizen, have been found to be no longer necessary;' that 'in several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority;' that, quoting from a former decision, 'while we take just pride in the principles and institutions of common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown;' that 'there is nothing in *Magna Charta* rightly considered as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age;' and then, in the light of the foregoing, the court added this significant language:

"'In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system, which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy.'

"In other words, the court considered indictments by grand juries and convictions by unanimous verdicts as matters of procedure rather than of fundamental right; and in holding, as it has held, that indictments by grand juries are not required in the States by the Constitution, even in murder cases, *Hurtado v. California*, 110 U. S. 516; *Bolln v. Nebraska*, 176 U. S. 83, and in apparently acquiescing in the view that verdicts by eight of the twelve jurors could be lawfully received in the States, even in criminal cases, *Thompson v. Utah*, 170 U. S. 343, it took the position that the 'immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard' were not violated." See also *Maxwell v. Dow*, 176 U. S. 581.

The actual decisions in the Insular Cases were upon tariff questions only, and yet some reference is made to the questions now before us. The four Justices who held in those cases not only that the Constitution did not apply of its own force in its fullness to newly-acquired territory but that such territory remained for many purposes foreign until incorporated as a part of the United States by Congress, would naturally be expected to hold that the municipal laws of the new territory, including those relating to civil and criminal procedure, would continue in force until changed by the acquiring power, and we find some expressions in their opinions tending to support this view and nothing tending to support the opposite view. For instance, Mr. Justice McKenna, speaking for himself, Mr. Justice Shiras and Mr. Justice White, quotes with approval in *De Lima v. Bidwell*, at page 760, the passage above set forth as quoted in our former opinion from *Holden v. Hardy*, 169 U. S. 366. The other member of the majority, Mr. Justice Brown, who had delivered the opinion in *Holden v. Hardy*, above quoted from, and who announced the decision in *Downes v. Bidwell*, pointed out (at page 780) that in the cases in which the constitutional provisions relating to grand and petty juries had been held to be in force in the territories, they had been extended there previously by act of Congress, and said (at page 784) that, "In all these cases" of territories, "Congress thought it necessary either to extend the Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights." Still he suggested that certain fundamental rights, distinguishable from matters of procedure, might be enforceable in acquired territory even though the constitutional provisions relating to such rights might not be in force there *per se*. He said, among other things (at page 785): "We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class, are the rights to one's own religious opinion, and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class, are the rights to citizenship, to suffrage (*Minor v. Happersett*, 21 Wall. 162), and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals."

Thus while the decisions in the Insular Cases related directly to other provisions of the Constitution, yet the opinions of the majority of the Justices seem to support our previous views in regard to the provisions now in question, not only by inference from their reasons and conclusions upon the provision then under consideration, but to some extent also by express language bearing upon the questions now under consideration.

6. Were the constitutional provisions relating to grand and petty juries put in force here by Congress, either by extending the Constitution here or by incorporating these islands as an integral part of the United States, by the Joint Resolution of annexation even though those provisions would not then have become applicable here *ex proprio vigore*? This is perhaps the question of greatest difficulty. It is a question of the construction of the Joint Resolution of annexation. The argument is based on the following paragraph of the Joint Resolution:

"The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The mu-